**IN THE HIGH COURT OF DELHI**

**Writ Petition (Civil) Nos. 6919/2007 & CM No.13137/2007**

**Date of decision: 20th September, 2007**

MANOJ METAL WORKS ... Petitioner
through: Mr. Virender Rawat, Advocate

VERSUS

BSES YAMUNA POWER LIMITED ....Respondent
through: Mr. Amar Gupta, Adv. with
Mr. Anupam Varma, Adv.

CORAM:
**HON'BLE MS. JUSTICE GITA MITTAL**

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**GITA MITTAL, J(Oral)**

1. This petition has been filed by the occupant of the premises no.9/2442, Gali No.13, Kailash Nagar, Gandhi Nagar, Delhi who claims that he is the sole proprietor of M/s Manoj Metal Work. It is the case of the petitioner that he had got an electricity connection sanctioned as back as in 1972 with a sanctioned load of 7.05 H.P. for industrial purposes. This connection is of three phase and heavy motors are being run

therefrom for the purpose of moulding and pressing of caps. It is submitted that the petitioner is a law abiding citizen and has not committed any illegality for almost 35 years.

2. The petitioner assails the action of the respondent who claim to have allegedly conducted an inspection of the premises on 16th January, 2007. The petitioner contends that the respondent in fact inspected the premises of his son Shri Manoj Kumar who is carrying on independent business in a separate premises without any connection with either the petitioner or his family or the petitioner's business. Shri Manoj Kumar is stated to have been sanctioned a commercial electricity connection with a sanctioned load of 4.00 K.W. in his own name.

3. The present writ petition has been filed by the petitioner who is aggrieved by the action of the respondents in raising a bill dated 25th January, 2007 on false allegations of the theft of electricity by the petitioner whereby a demand of Rs.9,95,634/- has been made. The challenge inter alia has been raised on grounds of violation of the statutory provisions of Section 126 of the Electricity Act, 2003 as well as failure of the respondent

to follow the Regulations 25-26 laid down by the Delhi Electricity Regulation Commission. In any case, the petitioner contends that such a bill and the disconnection of the electricity could not have been carried out by the respondent without issuance of notice to show cause and grant of opportunity to the petitioner to place his case before the respondents.

4. Inasmuch as the respondents removed the meter of the petitioner, he was deprived of electricity and faced a hostile situation of threat of arrest. In addition, the petitioner has been compelled to make payment of a total sum of Rs.4,40,000/- between 30th April, 2007 & 20th August, 2007. These payments have been made under protest in terms of the communication dated 26th February, 2007 as sent by the petitioner.

5. Mr. Arun Gupta, learned counsel appearing for the respondent on advance notice, has vehemently contested the present writ petition. It has been pointed out that the petitioner is agitating purely disputed questions of facts relating to the inspection which was carried out by the respondent. It has further been urged that the statutory provisions and regulations relied upon by the petitioner, have no applicability

on the facts of the instant case. Mr. Gupta contends that inasmuch as in the the present case the respondents have found that the petitioner was indulging in direct theft, no notice to show cause was required to be given. My attention has been drawn to certain recoveries purportedly effected by the respondent in support of the contention that the petitioner was indulging in direct theft.

6. The petitioner, however, vehemently disputes these contentions of the respondent.

7. Be that as it may, having regard to the entire conspectus of facts and questions raised by both sides, it is evident that several disputed questions of fact which cannot be decided without evidence, have been raised. The issue as to whether the inspection conducted by the respondent was not in premises of M/s Manoj Metal Works; the ownership and load of the machines; the disputes with regard to the evaluation of the connected load by the respondent, are all disputed questions of fact which cannot be adjudicated upon without leading evidence by the parties in support of their respective contentions.

8. The petitioner has disputed recovery of any material which has been alleged by the respondent in the alleged report dated 16th January, 2007. In these circumstances, the respondent would be required to prove both the inspection as well as the correctness of the statement made therein in appropriate proceedings.

9. It has been stated that the respondent is in the process of evaluating the case of the petitioner and taking further proceedings in accordance with law against him. In these circumstances, such proceedings would be commenced before the court having jurisdiction in accordance with law. Such court would have the jurisdiction under Section 154(5) and other provisions of the Electricity Act, 2003 to adjudicate upon the liabilities, both civil or criminal, of the consumer, if any. It is also open for the petitioner to take appropriate remedies for assailing the alleged inspection; the action of the respondent in raising the bill as well as the theft assessment by the respondent in appropriate civil proceedings wherein he would have an option to prove his contention.

10. However, inasmuch as the electricity of the petitioner

stands disconnected and the respondent has removed the meter, in my view appropriate directions for resumption of the electricity supply would be warranted in the interests of justice. Undoubtedly, the proceedings which respondent may initiate or the proceedings which the petitioner may initiate before the Civil Court, may be time consuming. The petitioner in the instant case has already deposited a sum of Rs.4,40,000/- with the respondent against the demand of Rs.9,95,634/-. Consequently, in order to balance equities and to do justice between the parties, without prejudice to the respective rights and contentions of both parties and without in any manner adjudicating upon the respective contention by the parties, it is directed that subject to the petitioner depositing a sum of Rs.60,000/- within a period of four weeks from today, the respondent shall forthwith restore the electricity connection bearing K. No1220R2010241. Needless to say, the petitioner would be required to complete all commercial formalities. Steps towards such completion of such formalities be completed immediately on the passing of this order. The petitioner shall also be liable to make payment of current

charges.

11. In view of the order recorded today, the respondent shall not insist on payment of the balance amount of the bill which was due on 25th January, 2007 (Annexure P-1). The petitioner shall be liable to make payment of all current charges which are demanded by the respondent for the electricity consumed.

This writ petition and application are disposed of in the above terms.

**Dasti.**

(GITA MITTAL)
JUDGE

September 18, 2007
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